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1 NAME: John Good
2 CDC NO.: T-82633
3 CELL NO.: E-1-88

4 Plaintiff In Pro Se
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JUL - 8 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
FILED

JUL 09 2008

8 UNITED STATES DISTRICT COURT RICHARD W. WIEKING
9 NORTHERN District For CLERK, U.S. DISTRICT COURT
10 (Insert Court Name And District) NORTHERN DISTRICT OF CALIFORNIA

11 In the matter of)
12 John Good,)
13 Plaintiff,)
14 vs.)
15 % Borroso / RN Mike Barker,)
16 MD Robert Bowman,)
Defendants.)
17 Calif Dept of Corrections

CASE NO.: C08-3285-PJH

EX PARTE MOTION FOR ASSIGNMENT
OF COUNSEL, AND SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION.

17 TO: THE ABOVE-ENTITLED COURT;

18 I

19 INTRODUCTION

20 1. COMES NOW, 7-5-08 John Good, plaintiff in the
21 above-entitled matter, pursuant to 28 USC § 1915(d), and moves
22 the Court for assignment of counsel to assist plaintiff in
23 further litigation of this action.

24 2. This Motion is based upon the forthcoming facts,
25 memorandum of points and authorities, the attached declaration
26 of plaintiff, as well as all other papers currently on file in
27 this matter.

IISTATEMENT OF FACTS

3. Plaintiff is currently incarcerated at the California
4 Silinas Valley State Prison Po Box 1050 Soledad CA 93960 E-1-88

5. Plaintiff currently lacks any meaningful source of
6 income to utilize in employing services of Counsel to provide
7 experienced legal advice and skills to further the litigation of
8 this case.

9. Plaintiff only has limited access to a law library and
10 other materials necessary to facilitate proper legal research;
11 the time permitted to study available legal materials is
12 extremely limited during access periods.

13. Plaintiff is a layman at the law with little experience
14 in the complex and confusing methods of legal research,
15 reasoning, and writing. Plaintiff has virtually no knowledge of
16 proper Federal Procedural Rules, Rules of Court, or Rules of
17 Civil Procedure which are a fundamental necessity and of
18 critical importance to proceed with important discovery and in
19 obtaining certain types of evidence plaintiff believes
20 defendants currently possess or have access to.

21. Plaintiff does not know what papers should now be filed
22 or submitted to the court or defendants, to further the
23 litigation of this case. Plaintiff has attempted to read and
24 understand the Federal Rules of Civil Procedure, but plaintiff
25 has been left predominantly confused regarding appropriate
26 action at this point.

27. Plaintiff sincerely desires to pursue the above-entitled
28 action and seek the relief requested in the original complaint

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1 previously filed in this matter.

2 9. Plaintiff has limited formal education and no education
3 in the law. Plaintiff does not understand or comprehend complex
4 legal reasoning, standards, or language when attempting to study
5 case precedent, codes, statutes, and other legal publications.
6 Plaintiff was required to enlist assistance of fellow prisoners
7 with limited knowledge of the law, in order to prepare and file
8 the pleadings previously filed with the court; including this
9 current Motion For Assignment Of Counsel. The assistance of
10 fellow prisoners is nearly non-existent due the confinement
11 conditions of my current housing unit; in fact, it is primarily
12 due to pre-printed forms available in the law library plaintiff
13 was able to submit the instant Motion and other papers on file
14 in this action.

15 III

16 REASONS THE COURT SHOULD ASSIGN COUNSEL

17 10. Plaintiff is unable to employ counsel; (see Forma
18 Pauperis application on file in the above-entitled action.)

19 11. The issues involved in this matter are complex and it
20 is difficult for plaintiff to understand how to further proceed
21 to press plaintiff's claims to a final resolution.

22 12. The issues involved necessitate serious and complex
23 discovery proceedings to be undertaken by plaintiff in order to
24 prepare for further proceedings on summary judgment or
25 preparation for trial.

26 13. The prison limits plaintiff's access and time with law
27 books and other legal materials necessary to facilitate proper
28 legal research and drafting of papers.

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1 14. Plaintiff has very little legal experience and
2 knowledge of law.

3 15. The interests of justice and the economy of judicial
4 resources would be best served by assignment of counsel to
5 assist plaintiff in this action.

6 DATED: 7-5-08

John Good T82633
(Signature)

JOHN GOOD T82633
(Print Name)

9 Plaintiff In Pro-Se

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MEMORANDUM OF POINTS AND AUTHORITIESARGUMENT

Plaintiff points out there is clear statutory authority under which the District Court may appoint or assign counsel to assist pro se plaintiff in litigating this civil action.; (28 USC § 1915(d); (in relationship to 42 USC § 1983); also see Norris v. Wainwright, (1977) 588 F.2d 130, 133-134; ("fundamental fairness" is the test by which the decision to appoint assistance of counsel rests.)

Another primary consideration is the right of every litigant, rich or poor, to equal consideration before the courts; (Coppedge v. United States, (1962) 369 U.S. 438, 456.). Even without statutory authority federal courts, in a proper situation or prevailing circumstances of a case, may assign counsel to assist an indigent state prisoner plaintiff under the court's supervisory powers and sound discretion; (McNabb v. United States, (1943) 318 U.S. 332, 346-347; also see The Supervisory Power of the Federal Courts, 76 Harv. L. 1656.)

Some courts hold counsel is not necessary "unless the circumstances of the particular case are such that counsel would be vital to attain due process, or access to the courts." (Eskridge v. Rhay, (1965) 345 F.2d 778, 782; Anderson v. Heinze, (1958) 258 F.2d 479, 482, 484; Dillon v. United States, (1962) 307 F.2d 445, 447; Bounds v. Smith, (1977) 430 U.S. 817, 823-832.)

Plaintiff is well aware the United States Supreme Court and Congress have never held a civil litigant has a right to have counsel assigned for assistance in pursuing claims in the

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1 courts. However, the question of whether or not to assign
2 counsel is solely within the discretion of the court and that
3 sound discretion "requires that counsel be appointed at least in
4 some cases." (United States v. Wilkens, (1964) 338 F.2d 404,
5 406; United States v. Wilkens, (1960) 281 F.2d 707, 715.)

6 Many entanglements and unnecessary delays and expense to
7 the judiciary and parties may be avoided by assignment of
8 counsel; (Taylor v. Pegelow, 335 F.2d 147, 150.) At least one
9 District Court has viewed in the context of habeas corpus that,
10 unless the application could be dismissed "summarily," counsel
11 should be assigned to assist the impoverished "layman prisoner";
12 (Cullins v. Crouse, (1965) 348 F.2d 887, 889.)

13 In civil rights actions under 42 USC § 1983, to redress
14 injuries inflicted by individuals "acting under color of state
15 law", courts have considered assignment of counsel to be of
16 fundamental importance where the plaintiff (prisoner civil
17 litigant) must conduct discovery to pursue the case and the
18 plaintiff cannot conduct the discovery himself; (Murrell
19 v. Bennett, (1980) 615 F.2d 306, 309.) Perhaps more
20 importantly, "summary judgment" proceedings against a prisoner
21 plaintiff, unable to secure discovery to ward off such judgment,
22 cannot be permitted against a layman prisoner plaintiff unaware
23 of proper opposition to such proceedings; (Ibid, at 310-311.)

24 In this case, as stated in the foregoing facts and
25 forthcoming attached declaration, plaintiff has clearly
26 demonstrated he cannot proceed further in litigating this
27 meritorious proceeding without assistance from someone
28 knowledgeable in the intricacies entailed in pursuit of this

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1 type of proceeding.

2 CONCLUSION

3 WHEREFORE, the foregoing reasons and any others deemed
4 appropriate by the court, plaintiff prays the court assign
5 counsel to in further pursuit of this action.

6 DATED: 7-5-08. Respectfully submitted,

7  T82633
8 (Signature)

9 John Good T82633
10 (Print Name)

11 Plaintiff In Pro-Se

1 DECLARATION SUPPORTING MOTION FOR COUNSEL

2 I, John Good T82633, declare the following:

3 1. I am the plaintiff in the above-entitled action.
4 2. I am currently a state prison inmate with no meaningful
5 source of income to utilize in employing assistance of counsel.

6 3. My personal attempts to read law books, Rules of Court
7 and Court Procedures have resulted in utter confusion and
8 furthered my inability to comprehend what action I should take
9 next to further prosecute this action.

10 4. I have had to obtain the assistance of other prisoners,
11 who appeared to have some knowledge of law, under very difficult
12 and restrictive conditions to assist me in writing and filing
13 the papers currently on file before the court.

14 5. Federal civil Rights suit in United States District
15 Court for the Northern District, US. Court House
16 450 Golden Gate Ave. SAN FRANCISCO CA 94102-3483

17 6. _____

18 _____

19 _____

20 7. _____

21 _____

22 I declare under penalty of perjury under the laws of the
23 State of California that the foregoing is true and correct and
24 that this declaration was executed on (date) 7-5-08,
25 ^{SILINAS VALLEY STATE PRISON} at (place) Soledad CA 93960, California.

26 John Good
27 (Signature)

28 Plaintiff In Pro-Se

PLEASE TAKE NOTICE THAT I John Good
will parole July 8th 2008
ANY FURTHER CONTACT WILL NEED
FORWARDED TO AS FOLLOWS

John Good

201^N YUCCA AVE Apt H-101
BARSTOW CA 92311

PLEASE TAKE NOTE THAT I AM AN
INDEBTED INMATE my CERTIFICATE
OF TRUST FORM WAS SENT WITH
MY COURT FORMS
THANK YOU

MESS # 760 221-3136

OR 760 252 4194

7-5-08

John Good 782633
E-1-88 PO Box 1050
Soledad CA 93960

PLEASE SEND ME COURT DATE ect

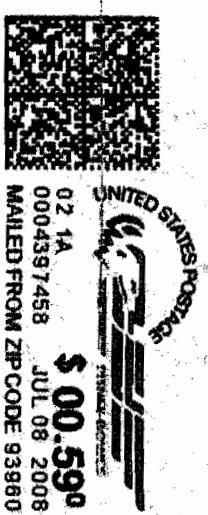
THANK you

Legal
MAIL
STATE PRISON
PRISONER MAIL
SOLICITOR GENERAL
T82633
1-88 Po Box 1050
Silvas Valley State Prison
Soledad CA 93960

To
United States District Court for
Northern District/Civil Right Division
U.S. Court House
450 Golden Gate Ave
SAN FRANCISCO CA

QW102-3483

SAN FRANCISCO, CA



C
V. LL
7/5/08

